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IN THE

Supreme Court of the United States

October Term, 1941

No. 139

CHARLES M. THOMSON, Trustee for Property of Chicago & Northwestern Railway Company; GEORGE KIMBALL; ORDER OF RAILWAY CONDUCTORS; and BROTHERHOOD OF RAILROAD TRAINMEN,

Petitioners,

vs.

BARNEY E. GASKILL, Et Al.,

Respondents.

BRIEF OF PETITIONERS ON CERTIORARI

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LAW REVIEW ARTICLES

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(The references herein to pages of the printed transcript of the record are to the pages of the reprint thereof prepared by the Clerk of the Supreme Court.)

OPINIONS IN COURTS BELOW

The findings and judgment of the District Court are found at pages 51-3 of the Record. The opinion of the Eighth Circuit Court of Appeals (R. 62-6) is reported in 119 F. (2d) 105.

GROUNDS FOR INVOKING JURISDICTION OF THIS COURT

The jurisdiction of this Court is invoked pursuant to Section 240, Judicial Code as amended, Title 28, Section 347 (a), U. S. C. A., and on the grounds that the Eighth Circuit Court of Appeals' reversal of the District Court and finding that the District Court had jurisdiction of

the action was erroneous and in conflict with the decisions of this Honorable Court and those of Circuit Courts of Appeals other than the Eighth Circuit.

STATEMENT OF THE CASE

This was an action at law, brought in the United States District Court for the District of Nebraska, Omaha Division, by Barney E. Gaskill and forty other conductors and brakemen. All plaintiffs are employees of the Chicago & Northwestern Railway Company (hereinafter called "C. & N. W."), working on that physical piece of trackage which comprises the operating division of that railroad, which is now called the Nebraska Division. The defendants were Charles M. Thomson (substituted as Trustee after this action was begun), Trustee for the C. & N. W., and George Kimball, an employee of the C. & N. W. in its Sioux City Division, was "made a defendant here as a representative of said Division, for the reason that the members vary and the names are unknown, so that he may, if he so desires, represent said Sioux City Division of Railway Trainmen and Conductors" (R. 3-4). Kimball was not sued as a representative of the employees of the railroad operating the Sioux City Division (R. 3-4, Par. 7), but merely invited to represent the Sioux City Division of the Railway Brotherhoods as distinguished from the physical piece of railroad on which certain C. & N. W. employees work. Because of this, the District Court, on motion of C. & N. W. (R. 13), ordered the Railway Brotherhoods (Order of Railway Conductors and Brotherhood of Railroad Trainmen) to be made parties defendant (R. 14), and they came in and assumed positions adverse to said plaintiffs to defend the integrity of their agreements with the managements of the railroads.

The plaintiffs, who are now the respondents, sought separate and independent money judgments against their employer (R. 6-7), the C. & N. W., for damages individually to each of them (R. 6) resulting from the alleged failure to allot them work on certain interrailroad runs between Omaha, Nebraska, and Sioux City, Iowa, in accordance with alleged seniority on trackage between California Junction, Iowa, and Omaha, Nebraska, claimed under collective bargaining agreements between said employer and the two Railway Brotherhoods, demanding an accounting and that C. & N. W. "be compelled to recognize plaintiff's seniority right in said work by the Sioux City Division * * *" (R. 7). The terms of the existing schedules and agreements are not set forth in respondents' petition or in their affidavits.

Said defendants, who are now the petitioners, by motions to dismiss (R. 15, 17, 32, 33), challenged the allegations as to jurisdictional amount involved.

None of the exceptions in Section 24 of the Judicial Code, Section 41, Title 28, U. S. C. A., apply here. The District Court was therefore without jurisdiction if the requisite jurisdictional amount was not involved.

The District Court refused to proceed further until the jurisdictional questions were tried out, and required the parties to submit evidence thereon (R. 22). Ten of the respondents submitted affidavits (R. 23-32) which in substance merely reiterated the formal conclusions as alleged in their petition (R. 5). Both Brotherhoods and the C. & N. W. submitted affidavits (R. 35-51) which established the facts as hereinafter summarized.

The District Court found (R. 51-3) that (a) no individual respondent's claim involved the requisite jurisdic-

tional amount, and (b) that the nature of the action and of the rights involved were not such as to permit the respondents to aggregate their claims for jurisdictional purposes and dismissed the action and entered judgment for petitioners for costs (R. 53).

Respondents appealed to the Eighth Circuit Court of Appeals, which sustained the District Court as to (a) above, but reversed the lower Court as to (b), holding (1) that the alleged claims to seniority rights to the runs described in respondents' petition were collective rights sufficient to permit respondents to aggregate their claims therefor for jurisdictional purposes, and (2) that upon such aggregation, the requisite jurisdictional amount was involved (R. 61-6).

Petitioners filed a motion for rehearing in the Circuit Court of Appeals (R. 66) which was denied May 9, 1941 (R. 67). Upon motion of petitioners (R. 67) mandate was stayed (R. 69). Petition for writ of certiorari was filed in this Court by the petitioners June 6, 1941, docketed as No. 139, and granted by this Court on October 13, 1941 (R. 70).

The Circuit Court of Appeals, after agreeing with the District Court that the evidence showed no respondent's claim was sufficient to meet the jurisdictional requirements (R. 64), held:

> ". . . the issue on jurisdiction is the value of the right of the Nebraska Division of Trainmen to carry on through its members the work they claim the several contracts of the railroad have allotted to the Nebraska Division of Trainmen." (R. 64.)

and because this was (as the Court concluded), a "common and collective right" (R. 65), held it was proper

to aggregate all respondents' claims for jurisdictional purposes.

The position of these petitioners is that the record (R. 35-51) established that the several collective agreements respondents rely upon could not, and did not, purport to give any rights of any kind whatever to the runs described in respondents' petition; that the fact that the collective agreements may have created some common and collective rights, such as seniority limited to C. & N. W. runs over C. & N. W. Nebraska Division trackage, does not serve to make other rights and claims to work on interrailroad runs, as to which there is no seniority in any employee, and which are not based on and do not spring from such collective agreements, common and collective rights, so as to provide an excuse for aggregation of respondents' claims for jurisdictional purposes; that the respondents' claims to said interrailroad runs are not based on and have no connection whatever with seniority, and the record fails to disclose facts sufficient to entitle the Federal Court to find jurisdiction for itself by aggregating respondents' claims, or otherwise.

The controlling facts relative to the jurisdictional question are established by the affidavits filed by petitioners (R. 35-51) and not controverted by respondents save by formal conclusions, and may be summarized as follows:

(See Plat, Appendix to Brief)

C. & N. W., so far as this case is concerned, owns, operates and manages lines of railroad in Nebraska, including one from Fremont, Nebraska, eastward to Blair, Nebraska, where it crosses the tracks of Chicago, St. Paul, Minneapolis & Omaha Railway Company (hereinaf-

ter called "C. St. P. M. & O."), and on across the Missouri River to California Junction, Iowa, and thence northerly on the east side of the Missouri River to Sioux City, Iowa. For operating purposes, the C. & N. W. is separated into (1) the Sioux City Division, which is the trackage of the C. & N. W. alone from Sioux City, Iowa, to California Junction, Iowa, and (2) the Nebraska Division, which is the trackage of the C. & N. W. alone from California Junction, Iowa, west across the river to Blair, Nebraska, and on to Fremont, Nebraska, and points west.

C. St. P. M. & O., separate and apart from the C. & N. W., owns, operates and manages a line of railroad from Omaha, Nebraska, northward to Blair, Nebraska (where it crosses the C. & N. W. east and west line above referred to) and on northward to Sioux City, Iowa, all on the west side of the Missouri River until it crosses that river opposite Sioux City.

Because of heavy grades and many curves over the C. St. P. M. & O. north of Blair and west of the Missouri River, the managements of said two railroads have for over six years operated trains primarily carrying C. St. P. M. & O. freight, between Omaha and Sioux City, running on the following trackage, to-wit, between Omaha and Blair on the C. St. P. M. & O. tracks, and from Blair across the river to California Junction on C. & N. W. tracks, and thence north to Sioux City on the east side of the river on C. & N. W. tracks. These runs are the runs described in respondents' petition (R. 4) as now being sought by respondents as employees of the Nebraska Division of C. & N. W. because of alleged seniority held by virtue of collective agreements with the C. & N. W. But they are interrailroad runs and not merely interdivisional runs of the C. & N. W. (R. 47).

As herein used, the term "interdivisional run" means a run upon the tracks of the same employer covering a part of two operating divisions of that same railroad, i. e., from Blair, Nebraska, on the C. & N. W. tracks in the Nebraska operating division to California Junction, Iowa, thence northerly on the C. & N. W. tracks to Sioux City in the Sioux City operating division, or vice versa. An "interrailroad run" merely means a train operated by the same crew over the tracks of two separate railroads, i. e., from Omaha, Nebraska, to Blair, Nebraska, over the C. St. P. M. & O. and thence either east over the C. & N. W. tracks to California Junction, or west over C. & N. W. tracks to Fremont, Nebraska (R. 47).

In this case, the seniority districts of the C. & N. W. employees correspond to the operating divisions made and designated by the C. & N. W., i. e., the Sioux City Division of that railroad is coextensive with the C. & N. W. Sioux City Division seniority district, and the Nebraska division of that railroad is coextensive with the C. & N. W. Nebraska Division seniority district (R. 44-5).

Seven and one-half miles of the said interrailroad runs described in respondents' petition are between Blair, Nebraska, and California Junction and over the C. & N. W. tracks and within the C. & N. W. Nebraska operating division, and hence within the C. & N. W. Nebraska seniority district. Approximately twenty-three miles are between Blair and Omaha, Nebraska, and over C. St. P. M. & O. tracks and not in any C. & N. W. seniority district (R. 45-6). The balance of the runs described in respondents' complaint are between California Junction, Iowa, and Sioux City, Iowa, are over C. & N. W. tracks, and (except between California Junction and Missouri

Valley, a distance of a little over a mile, which is neutral territory) are within the C. & N. W. Sioux City operating division, and hence within the C. & N. W. Sioux City seniority district.

Each of the said two railroads has its own collective agreements with the said Brotherhoods. Neither the C. St. P. M. & O., nor any of its employees, are parties to this action, but only C. St. P. M. & O. employees have any seniority on the 23 miles of C. St. P. M. & O. track between Blair and Omaha, Nebraska (R. 45-6).

These collective agreements are the sole source of any seniority rights in the employees of the respective employers. Such seniority rights are limited absolutely to a seniority district which is a definitely defined portion of the tracks of that particular employer. No railroad employee has any seniority on more than one railroad at a time, and this is confined to runs of his employer over his employer's tracks and only on a particular portion of those tracks as above stated. (See also paragraph 5 of respondents' petition, R. 2-3). Although the employer is interested therein and his employees and tracks are part of those used, an interrailroad run is not a run of the employer, is not confined to the employer's tracks, is not within any employee's seniority district, and no rights thereto are created by the collective agreements between the employer and its employees (R. 46-7).

The allocation of interrailroad runs described in respondents' complaint do not arise by virtue of seniority or any agreements as to seniority, but solely by virtue of the agreement referred to in paragraph (12) of respondents' petition (R. 5). This agreement consisted of decisions made by each of the two Brotherhoods in their

own forums on a long-standing dispute *between employees* of two different railroads, and not in regard to any seniority created by collective agreements. These decisions were approved and adhered to by the respective railroads in dividing the work on these interrailroad runs between the C. & N. W. Sioux City Division employees and the C. St. P. M. & O. employees on the basis of the proportion which the miles of track of each railroad over which the runs were operated bore to the total miles of track involved in said runs.

This allocation did not affect the relations between C. & N. W. Nebraska Division employees and the C. & N. W. Sioux City Division employees, except that these interrailroad runs were not only over tracks in the Sioux City C. & N. W. Division and over tracks of the C. St. P. M. & O., but also over seven and one-half miles of track between Blair and California Junction which were within the C. & N. W. Nebraska operating division. But that seven and one-half miles of track was continued open to all C. & N. W. Nebraska Division employees in handling trains originating upon or destined to the C. & N. W. Nebraska operating division.

Respondents' Petition does not allege that their seniority rights over said seven and one-half miles of track between Blair and California Junction have been invaded or denied, or that C. & N. W. or the Railroad Brotherhoods or George Kimball as a representative of anyone failed or neglected to give respondents recognition for any part of runs on C. & N. W. tracks which did, in fact, constitute C. & N. W. divisional or interdivisional runs, or their proper percentage thereof based upon the mileage on the C. & N. W. tracks in the Nebraska operating divi-

sion (R. 3-4). Respondents predicated their alleged right, which they claimed had been denied, not upon the seven and one-half miles of track between Blair, Nebraska, and California Junction, which was within their seniority district without dispute, but sought to include within their alleged seniority district the twenty-three miles of trackage of the separate railroad, the C. St. P. M. & O. between Blair, Nebraska, and Omaha, Nebraska, and to have the said interrailroad runs considered as interdivisional runs of the C. & N. W. rather than interrailroad runs of C. St. P. M. & O. and the C. & N. W.

The Circuit Court of Appeals asserted that the value of respondents' rights, which that Court thought were collective rights, were for "while the alleged contracts continue" (R. 64), and said that such value "for the life of the contracts will greatly exceed $3,000.00" (R. 64). There is nothing in the record to show the life of such contracts, but the Nemitz affidavit (R. 35-42) established that (1) the division of work on the said runs has been changed on several occasions, (2) the route of the runs can be and has been changed and the railroad lines are such as to permit the runs to be routed wholly on either railroad line to the complete exclusion of the other railroad and its employees, and (3) as previously pointed out, that no employee of either railroad has any rights, which are created by or which spring from said collective agreements, to any portion of the runs described in respondents' petition.

After petitioners' evidence was submitted in the District Court, that Court gave the respondents a further opportunity to rebut the same or to produce other evidence, but respondents refused to do so and elected to

stand on the single proposition that they were entitled to aggregate their claims for jurisdictional purposes (R. 51-3). (Also see respondents' Statement of Points intended to be relied upon) (R. 55-6.)

ASSIGNED ERRORS INTENDED TO BE URGED

The Circuit Court of Appeals erred as follows:

1. In holding the District Court had jurisdiction, and in failing to sustain the District Court's dismissal of the case for want of jurisdiction.

2. In holding that respondents, as a class or otherwise, were entitled to aggregate their claims for jurisdictional purposes.

3. In holding that respondents' claims to the runs described in their petition arose out of seniority or other rights created by C. & N. W. collective agreements with the representatives of its employees so that the value of such common or collective rights could be aggregated for jurisdictional purposes.

4. In holding that respondents' petition asserted any claims, the aggregate value of which were at least equal to the requisite jurisdictional amount, which lawfully could be aggregated for jurisdictional purposes.

5. In holding that respondents had sustained the burden of proof to establish jurisdiction in the Federal Court, after their jurisdictional allegations were appropriately challenged.

ARGUMENT

Summary of Argument

A. Only in a true class action, such as defined in Clause (1) of Rule 23 (a) of the Rules of Civil Procedure, is aggregation of claims permissible for jurisdictional purposes. Such aggregation is not permissible in "hybrid" or "spurious" class actions, as referred to respectively in Clauses (2) and (3) of said Rule 23 (a). Respondents' action, if a class action at all, is of the "spurious" type in which such aggregation is not permissible.

B. Respondents' petition asserts no claims on common or collective rights. Respondents made no effort to controvert petitioners' evidence that railroad collective agreements give seniority only to runs of the employer over the employer's tracks, and the greater part of the seniority trackage claimed by respondents is C. St. P. M. & O. trackage and that the runs claimed by respondents are interrailroad runs as to which no employee has any seniority or right under or pursuant to the collective agreements. Since respondents' collective rights are not involved or disputed, they can afford no basis for permitting the aggregation of other claims for jurisdictional purposes.

C. Respondents failed to sustain the burden to establish the Court's jurisdiction after the alleged conclusions in their petition were properly challenged.

A

Both the District Court (R. 51-3) and the Circuit Court of Appeals (R. 64) held all respondents had failed to establish an individual claim for as much as $3,000.00, and, in effect, this was admitted by respondents' State-

ment of Points on Appeal (R. 55-6), and was admitted by respondents on the first page of their response to the petition for the writ of certiorari. (The evidence showed that after disregarding many factors which would make respondents refuse to accept such work and make it impossible for them to work that often, and many other contingencies beyond the control of any employee, still the maximum the highest paid respondent could make on the only part of the runs within his seniority district (Blair to California Junction) working a round trip every day, over a period of six years, would aggregate only $2,299.50 (R. 48). The Nebraska statute of limitations is five years for written contracts and four years for oral contracts (Sections 20-205, 20-206, Nebraska Compiled Statutes, 1929, as amended. Statutes, see Appendix.)

The sole question involved, therefore, is whether the action and the rights therein asserted are such as to permit the aggregation of claims for jurisdictional purposes.

In the lower courts respondents appeared to confuse their right to consolidate their various individual causes of action into one suit, as permitted even as to the type of suits referred to in Clause (3) of Rule 23 (a) of the Rules of Civil Procedure (28 U. S. C. A., following Section 723 (c)), with the rights and privileges of plaintiffs in "true" class actions such as referred to in Clause (1) of said Rule 23 (a). Respondents' right to join in one suit is not attacked. Petitioners merely contend that such bare right of joinder does not carry with it the right to have the joint suit treated as a true class action, and that such was not intended by Rule 23 (a).

Rule 23 is but a substantial restatement of Equity Rule 38 as construed at the time Rule 23 was adopted.

The notes to Rule 23 refer to Professor Lesar's article entitled "Class Suits and the Federal Rules," 22 Minn. Law Review 34, for a general analysis of class actions and the requisites of jurisdiction.

Adopting Professor Lesar's nomenclature, such "class suits" are intended by Rule 23 to fall into three distinct classes, as follows:

(1) *True class actions.* Such is the type referred to in Clause (1) of Rule 23 (a) and is one where the various parties are not only a class similarly situated, but each one has a common interest or title in the recovery sought. *Gibbs v. Buck,* 307 U. S. 66, 83 L. Ed. 1111, which involved the American Society of Composers and Publishers' practices and a state statute in regard thereto, was such a true class action; and hence one or more of such parties could bring a class action for themselves and for all others in the class, and because of the common interest or title could aggregate their claims in order to establish the jurisdictional amount.

(2) *Hybrid class actions.* Such is the type referred to in Clause (2) of Rule 23 (a) and is an action where one or more parties are so situated as to permit one party to bring a class action for himself and others similarly situated, but there is not such a common interest or title as to permit all to aggregate their claims in order to establish the jurisdictional amount. The United States Supreme Court in effect has said that *Clark v. Gray,* 306 U. S. 583, 83 L. Ed. 1001, was such an action. There the action was brought by a few for all in the class who were adversely affected by a California statute, but certainly none had any common interest or title in the re-

covery of any other plaintiff, as was on the same day held to be the case in *Gibbs v. Buck,* supra.

(3) *Spurious class actions.* As Professor Lesar says, these are "the third type of actions provided for in subsection (3) (a) of Rule 23, (where) the only community of interest is in questions of law or fact." In this third type, while the parties are permitted to join in bringing one action, each plaintiff has a separate and distinct right, and each must have, and if challenged prove, the jurisdictional requisites.

Respondents did not sue as a class, sought no relief and asserted no claims for themselves or on behalf of others as a class. Respondents' petition and the entire record made by them show only individual claims to be involved. The individual and personal nature of each Respondent's cause of action, as distinguished from any assertion of common, collective or class rights, is clearly shown by such allegations as (a) in Par. 13 of their petition (R. 5) as to damage, "to each of said plaintiffs herein," (b) in Par. 17 (R. 6), damages "that each have sustained," and (c) in the prayer (R. 6) seeking judgments "in favor of each individual plaintiff for the amount due him."

Other than as to their "collective rights," on which the Circuit Court of Appeals relied so heavily, and which will be subsequently discussed, there are no claims asserted in which the respondents claim any common interest or title. The only community of interest is in the questions of law or fact affecting their several rights, some of which, but not all, are common, and, in the similar relief which each respondent seeks. Such an action, if

a class action at all, is only one of the "spurious" type covered by Clause (3) of Rule 23 (a) of the Federal Rules of Civil Procedure for the District Courts of the United States, Title 28, following Sec. 723 (c), U. S. C. A.

As Judge Clark of the Second Circuit Court of Appeals said in *Hackner v. Guaranty Trust Co.*, 117 F. (2d) 95:

> "The interests of all are in common and involve a common question of law and fact. The prayer for relief was for an accounting, damage for the loss sustained by all note-holders. * * * The sole question is whether or not the amount in controversy exceeds, exclusive of interest and costs, $3,000.00 * * * Aggregating to make up the jurisdictional amount is permitted only when the claims are of a joint nature, as when it is sought to enforce a single title in which the plaintiffs have a common interest. * * * A class could be found only in the 'spurious' sense (See 2 Moore's Fed. Practice, 2241), that a common question of law and fact was involved. Among parties so related aggregation is improper. * * *"

The Eighth Circuit Court of Appeals, in holding that this case was controlled by *Gibbs v. Buck*, supra, seems to have erroneously assumed (1) that the respondents were all the conductors and brakemen working for the C. & N. W. in its Nebraska Division and that all had a common interest in this litigation. (The Court says (R. 65) the plaintiffs "constitute the class"). And (2) that the particular operating division of that railroad was analogous to ASCAP in the *Gibbs v. Buck* case.

That there are conductors and brakemen, other than the respondents, working in said operating division with higher seniority rank, is shown by the seniority numbers listed in respondents' affidavits (R. 23-32). It necessarily

follows that others in that Division having greater seniority than these respondents, and hence having attractive runs over C. & N. W. trackage secure from encroachment by employees of other railroads, are not interested in or desirous of having the respondents succeed in litigation, which might permit the employees of another railroad to assert seniority rights over C. & N. W. trackage.

Thus while the Circuit Court of Appeals attempts to treat the respondents as being the class and defines that class as including all C. & N. W. employees working on the Nebraska Division of that railroad, it is evident there is not even a common question of fact as between the rights and interests of the other employees on the C. & N. W. Nebraska Division and the respondents. See *Hansberry v. Lee,* 311 U. S. 32, 85 L. Ed. 11.

The Division involved is not the local subdivision of the Brotherhoods, but the operating division of the railroad which, unlike ASCAP, is a piece of railroad track and, unlike ASCAP, is not an organization of the employees working therein, having officers, activities or functions. This is a completely different situation from ASCAP, which as an organization and as the holder of limited assignments from its members of copyrights, collected large sums of money to which the ASCAP members had a common interest and title and such ASCAP members were entitled to "share in the earnings through mandatory distribution under the articles of association and not by way of dividends. . . ." *Gibbs v. Buck, supra.* This Railroad Division is not an organization at all and neither collects nor distributes moneys for any employee. None of those working on this trackage have any common

interest or title in what any other employee receives, and none is asserted. The only relation of respondents to this Division is that they work therein and their seniority rights are confined thereto.

The respondents are merely a part of a group working for the same employer in the same State and under the same form of employment agreement. In seeking a common immunity from an alleged restriction on their means of earning a livelihood, they are in exactly the same situation as the plaintiffs in *Clark v. Gray, supra,* in that "there are numerous plaintiffs having no joint or common interest or title in the subject matter of the suit," and hence whose "only community of interest is in questions of law or fact." In such a situation, the rule of *Clark v. Gray, supra,* as it is now being applied by the other Circuit Courts of Appeals in *Central Mexico Light & Power Co. v. Munch,* 116 F. (2d) 85; *Hackner v. Guaranty Trust Co., supra,* and *Atwood v. National Bank of Lima,* 115 F. (2d) 861, is the correct rule. See also, *"Class Suits and the Federal Rules,"* by Prof. Lesar, 22 Minn. Law Review, 34; *Kvos, Inc. v. Associated Press,* 299 U. S. 269, 81 L. Ed. 183; *McNutt v. General Motors Accept. Corp.,* 298 U. S. 178, 80 L. Ed. 1135; *Stucker v. Roselle,* 37 F. Supp. 864; *Milk Wagon Drivers Union of Chicago, etc., et al. v. Associated Milk Dealers, et al.,* 39 F. Supp. 671.

Atwood, et al. v. National Bank of Lima, 115 F. (2d) 861, decided by the Sixth Circuit Court of Appeals on December 3, 1940, involved an action by a number of plaintiffs, all having claims as beneficiaries of the same trust, who, upon their concept of the suit being a class action, merely alleged that the amount in controversy ex-

ceeded $3,000.00, and made no allegation as to what they were separately entitled to recover. The Court held the claims could not be aggregated for jurisdictional purposes, and hence remanded the case to permit amendments to the pleadings to enable the plaintiffs individually to show the jurisdictional amount.

In the present case, the respondents did plead a conclusion as to each of their claims being of the requisite amount, but, after proper traversement of such conclusion, the trial Court did what the appellate Court directed to be done in the *Atwood* case, namely, gave each plaintiff every opportunity to establish that his claim would be as much as the required amount. All respondents failed completely to make any such showing. Indeed they abandoned the attempt (R. 52, 55-6).

Respondents' brief on appeal to the Circuit Court (which was filed in this Court with respondents' response to the petition for certiorari) says, at page 54:

> "But where these interests are distinct, and they are joined for the sake of convenience only because they form a class of parties whose rights or liabilities arose out of the same transaction, or have a relation to a common fund or mass of property sought to be administered, such distinct demands or liabilities cannot be aggregated."

The same proposition was stated in *Clark v. Gray, supra,* as follows:

> "* * * It is plain that this allegation (alleging generally that the amount involved exceeded $3000.00) is insufficient to satisfy jurisdictional requirements where there are numerous plaintiffs having no joint or common interest or title in the subject matter of the suit. * * * There is a similar rule that when sev-

> eral plaintiffs assert separate and distinct demands in a single suit, the amount involved in each separate controversy must be of the requisite amount to be within the jurisdiction of the District Court, and that those amounts cannot be added together to satisfy jurisdictional requirements."

Respondents are in the position of having failed to plead a class action in any fashion whatever, having refused to offer any proof that they belong to or claimed to have any right to sue as a class, having failed to seek relief for themselves or anyone else as a class, and having specifically confined their claims to "separate and distinct" demands for individual money judgments. Surely then, respondents have no rights under Rule 23 other than those given to "spurious" class actions. On page 24 of respondents' said brief as filed in the Circuit Court of Appeals it is recognized that this action belongs in this "spurious" classification.

If the respondents' claims have any merit whatever they merely serve to make them creditors of C. & N. W. and as such they cannot aggregate their claims for jurisdictional purposes. *Hilliker v. Grand Lodge*, 112 F. (2d) 382. There can be no question but that the jurisdictional allegations were properly and sufficiently traversed (R. 14-16, 17-22, 33-5), or that the absence of jurisdiction in the Federal Court is at all times before the Court. *Kvos, Inc. v. Associated Press*; 299 U. S. 269, 81 L. Ed. 183; *McNutt v. General Motors Accept. Corp., supra; Town of Lantana, Florida, v. Hopper*, 102 F. (2d) 118.

B

At this point it should be helpful to note that, contrary to the inference which respondents sought to give, the 1930 change in railroad operation was not a change

in any employee's seniority rights, but merely a change in the route over which the traffic was handled (R. 40-1, 46-8). This served to decrease the use of C. & N. W. trackage, but practically none of this trackage was in respondents' seniority district (R. 46-7).

As shown by the attached plat and petitioners' affidavits (R. 35-51), the routing of the runs prior to 1930 was from Omaha, Nebraska, directly across the Missouri River on the Illinois Central Railroad bridge to Council Bluffs, Iowa, thence to Missouri Valley, Iowa, and on northward to Sioux City, all on C. & N. W. tracks, but not on trackage within the C. & N. W. Nebraska Division. Prior to August 1, 1926, C. St. P. M. & O. employees had rendered a part of this service, although they had no seniority whatever over any of the tracks then involved. They objected to losing this work after August 1, 1926, and it was the result of this controversy that on May 1, 1930, the runs were again rerouted so as to be as at present, and work was restored to the C. St. P. M. & O. employees on the basis of their trackage as now being utilized. The allocation of runs in this pooled operation as made by the Brotherhoods and the railroads in 1930 (R. 40-1, 46-8) could not have served to change anyone's seniority, since it gave work or credit for work over tracks of a railroad other than the railroad on which the recipient had any seniority at all. Hence, neither the rerouting of the traffic by the two railroads nor the resulting allocation of runs as agreed to by the railroads and Brotherhoods had anything to do with seniority.

Geo. T. Ross Lodge No. 831, et al. v. B. R. T., 191 Minn. 373, 254 N. W. 590, was a case where separate operations of two railroads were combined into a pooled

single operation, as in the present case, and the operation thereafter was jointly conducted by the two railroads, and certain employees of one railroad were complaining that their seniority rights had been infringed by an agreement between the railroads and the Brotherhoods as to the division of the work between the employees of the two railroads.

The following quotations are taken from that opinion:

"The railway companies involved operate under so-called schedules or contracts not made with the individual men but negotiated by the Brotherhoods under their practice and constitution with the railroads severally. These schedules are the result of collective bargaining. All railway employees have the benefit of these schedules whether they belong to the Brotherhoods or not."

"A railway company must be conceded the right to make such contracts with another company in respect to some joint use of tracks and transportation facilities as it deems desirable, provided there is no violation of a statute or of the contract rights of its employees. The pooling agreement is admittedly valid, approved as it was by the Interstate Commerce Commission. * * * The men of each railway were given as nearly as possible the same amount of work in handling the ore transportations as they had before the pooling agreement."

"There is ample support for this finding not only from a consideration of the provisions of the schedule of June 1, 1924, but also in the testimony of the highest Brotherhood officials who had spent many years in the service passing upon disputes relative to seniority rights and construing contracts between railway companies and their employees. Indeed, some of these witnesses were persons whose

duty was to promulgate rules or decisions governing seniority rights."

* * * * *

"Schedules or contracts governing the rights of railway employees as to wages, seniority and working conditions are obtained through the instrumentality of Railroad Brotherhoods by the method of collective bargaining and are enforced by the Courts. George v. Chicago, Rock Island & Pacific Ry. Co., 183 Minn. 610, 235 N. W. 673, 237 N. W. 876. All employees obtain the benefit thereof whether they belong to an affiliated lodge or not. Of course, nonmembers can stand in no better position than the members. * * * But a Brotherhood's interpretation of schedules, procured through the efforts of the organization, and its determination of a controversy according to its constitution and practice, should mean much to the courts. * * * There can be no doubt that not only the defendant Brotherhood but the Brotherhood of Locomotive Firemen and Enginemen, and the Brotherhood of Locomotive Engineers have made a final decision that no violation of plaintiffs' seniority rights under the schedule of June 1, 1924, will result from the two railway companies putting into effect the modification of the pooling agreement by the substitution of Exhibit A in place of paragraph 6 of article III thereof. To hold that plaintiffs are not concluded by the decision of the Brotherhoods seems to us destructive of the power of the organization to compose disputes between employer and employees, and to weaken the efficacy of collective bargaining deemed so essential to the success of labor organizations. * * *"

The basis of the Circuit Court of Appeals' conclusion that respondents' claims could be aggregated for jurisdictional purposes was that such claims were for "the value of the right of the Nebraska Division of Trainmen to carry on through its members the work they claim

the several contracts of the railroad have allotted to the Nebraska Division of Trainmen. (R. 64). * * * The common and collective right of the conductors and trainmen to recognition by the railroad is analogous (to those of ASCAP members) * * * The aggregate value of the work claimed by the class is, therefore, the criterion for jurisdiction" (R. 65).

Petitioners contend the Circuit Court of Appeals is wrong as to (1) the class involved, (2) the nature and source of the rights involved, (3) the contracts involved, (4) the controversy involved, and (5) the value involved.

If any "class" is involved, it is certain that respondents do not constitute the Nebraska Division of Trainmen. The Circuit Court of Appeals does not specify whether by the "Nebraska Division of Trainmen" it means all those employed by C. & N. W. in its Nebraska operating division or those belonging to the local lodges or "divisions" of the respective Brotherhoods. The Court could have meant either, but apparently did not make any distinction between the two. The respondents do not constitute all the members of either class and do not sue as members of either such "class" and assert no rights as being inherent to them by virtue of membership in either. To the contrary, the respondents seek separate and independent money judgments against their employer, the C. & N. W., allege the existence of no class whatever, seek no relief, and assert no claims for themselves or on behalf of others as a class. The individual and personal nature of each respondent's cause of action as distinguished from any assertion of class rights is clearly shown by the allegations in their petition hereinbefore referred to. Even the affidavits filed by the respondents

(R. 23-32) definitely show an intention to sue for the individual damages suffered by each individual on his own personal rights as claimed. Therefore, contrary to the Circuit Court of Appeals' statement that "the prohibition against doing the work is against the class and the plaintiffs constitute the class" (R. 65), the petitioners assert that the respondents are not that class at all.

In any event, however, respondents' petition (R. 1-7) and petitioner's evidence (R. 35-51) clearly established that respondents' rights, interests and claims are not common and are not even in harmony with those of others in the class, whichever group the Circuit Court of Appeals or respondents' petition may have intended to refer to. Other employees in either of such classes, because of having greater seniority than respondents and hence working C. & N. W. runs with which they are satisfied, or for other reasons, have no interest in (1) seeing fellow employees in the Sioux City Division being required to grant mileage percentage twice for operating over the same stretch of track, or (2) seeing employees of another railroad denied mileage percentage for that part of interrailroad runs handling freight of their railroad over their railroad's tracks, or (3) in having all the fruits of railroad collective bargaining thrown into utter chaos by any doctrine that one railroad's agreement can somehow create seniority in its employees on the tracks of another railroad, or such chaos as would result if some right to seniority to interrailroad runs was created in employees of every seniority district by the fact that such interrailroad runs operated for any distance over tracks within such seniority districts, or (4) in having the decisions of the forums of their own collective bargaining agents be flouted and disregarded. Such matters, and possibly

many others, serve to make the interests of most of those composing the "Nebraska Division of Trainmen" and of their own collective agents, directly and completely adverse to the claimed rights of the respondents. As this Court said in *Hansberry v. Lee*, 311 U. S. 32, 85 L. Ed. 11, "It is quite another (matter) to hold that all those who are free alternatively to assert rights or to challenge them are of a single class . . . ."

This situation, in part, accounts for the willingness of the two Brotherhoods to be brought into this litigation, and for the position they have assumed therein. The very integrity, workability and benefits of their collective agreements with the railroads are threatened by respondents' claims. The respondents have sought to reap the benefits of collective bargaining and avoid all of its responsibilities and limitations which apply equally to them and which have been assumed by all in the class but them. Manifestly, this is union labor heresy. If successful, such a theory would eventually dissipate all that has been accomplished in over seventy-five years by railroad collective bargaining.

A consideration of the powers of collective agents to bind all in the bargaining unit, and the effect of changes in the agreements on the employer's obligations to its employees, probably goes more to a portion of the merits than is justified by the questions now before this Court. But at least respondents cannot in this action conjure up a true class action by attempting to allege any such heretical theory. Further, such a question clearly would grow out of the rules and laws of the collective agents' organizations and the inherent powers of collective agents in general, but not out of the particular agreements referred to in respondents' petition.

Further, the Circuit Court of Appeals was mistaken as to the rights and as to the contracts involved. No seniority rights whatever are involved, and hence the only contracts which create such rights are not involved.

Railroad seniority means age in service. It is confined to railroad operating divisions, i. e., a list of the conductors for the Sioux City Division of C. & N. W. is the seniority list for that division. No. 1 on that seniority list is the name of the man who has the oldest date of beginning service as a conductor on the C. & N. W. on that division, not on the railroad, and No. 2 has the next to oldest date of beginning service on the C. & N. W. as a conductor on that division. (See par. 5 of respondents' petition, R. 2-3.)

Seniority gives the oldest man in service certain rights, for example, the privilege of selecting the run he prefers on the division on which he has seniority. So the conductor having the greatest seniority among those respondents on the C. & N. W. Nebraska Division being No. 57 (R. 23-32), there are 56 other conductors who have seniority over all respondents to any C. & N. W. Nebraska Division run.

The seniority lists or schedules merely provide for purely personal wages and working conditions for each employee, if and when he is an employee and does work. They in no way bind the employer to establish or continue work or runs in order for those listed on the schedules to have something to which such schedules could be applied. The agreements providing for the schedules were obtained by collective bargaining, but do not insure work. It is only when and if work is available, which is subject to a schedule on which a particular man may be listed,

that any collective right or senority thereto arises, and even then the schedules are solely for the purpose of determining, not joint, but conflicting claims between the men working in the same division of the same employer.

An individual can only have seniority on one division of a railroad at a time, and on only one railroad (R. 45-7). If he quits working on the division on which he has seniority and goes on another division, even on that same railroad, he loses all his seniority rights, except that he gets new seniority from the date he begins working on the other division (R. 2-3).

Petitioner's evidence (R. 35-51) is uncontroverted that railroad collective agreements in general, and those here in particular, are the sole source of all seniority rights. The C. & N. W. employees have a collective agreement with the C. & N. W., and the C. St. P. M. & O. employees have another and separate agreement, not with the C. & N. W., but with the C. St. P. M. & O. These separate agreements each create seniority only on runs of the employer over the employer's tracks, and only over such of those tracks as are within the employee's seniority district (R. 3-4), and hence could not create any seniority as to an interrailroad run. (See *"Seniority Rights Under Labor Union Working Agreements"* by Prof. Christenson, 11 Temple Law Quarterly, 355.)

The Court said, in *Shaup v. Grand International Brotherhood of Locomotive Engineers*, 223 Ala. 202, 135 So. 327:

> "The seniority rights of complainants were by virtue of agreement between the Brotherhood and the Railroad Company * * *"

In *Ryan v. New York Central*, 267 Mich. 202, 255 N. W. 365, it was said:

> "He (the employee) has no inherent right to seniority in service, nor did such right arise out of his employment by the Railroad Company, except as provided for in the contracts entered into and the rules adopted by the Company relating thereto."

There is no dispute but that all the seniority which exists here belongs to (1) C. & N. W. Sioux City Division employees for C. & N. W. runs on C. & N. W. tracks between Sioux City, Iowa, and California Junction, Iowa, (2) C. St. P. M. & O. employees for runs of their employer on its tracks between Omaha, Nebraska, and Blair, Nebraska, and (3) C. & N. W. Nebraska Division employees for C. & N. W. runs on the remaining portion of the trackage involved as described in respondents' petition, which is the seven and one-half miles of C. & N. W. tracks between Blair, Nebraska, and California Junction, Iowa.

If the runs described in respondent's petition had been broken down into three separate runs, each by the employers respectively owning the three separate sections of track, and beginning and ending, respectively, where such ownership begins and ends, then, without dispute, respondents would have certain superior rights, at least over C. & N. W. Sioux City Division employees, and over C. St. P. M. & O. employees as to said seven and one-half mile run (Blair to California Junction) and such would result from their seniority rights created by the collective agreements. However, that is not the run which the respondents have described in their petition. They describe and claim an interrailroad run over all three sections of track. Naturally, such a breaking down of runs as above suggested would not be a feasible opera-

tion for the railroads. Further, it would be resisted by the employees, as none of the portions of the runs then would be attractive to the employees, because of the limited mileage which could be worked per day, and these employees are paid by the mile (R. 41, 48).

But respondents seek both to ignore the fact that the runs they described were interrailroad runs, and hence no employee has any right thereto by virtue of seniority created by the collective agreements, and also to assert that they have seniority to the twenty-three mile portion of the runs over C. St. P. M. & O. tracks between Omaha and Blair, Nebraska (R. 4). The Circuit Court of Appeals apparently adopted this unsupported allegation, notwithstanding sworn proof to the contrary (R. 35-51) which the respondents did not attempt to contravert, save by reiterating the formal conclusions of their petition.

Thus it is clear that the real controversy is not, as stated by the Circuit Court of Appeals, over "the right * * * to carry on * * * the work they claim the several contracts of the railroad have allotted * * *" (R. 64). The agreement (interrailroad) referred to in Paragraphs 10 and 12 of respondents' petition (R. 4, 5) is what the controversy is about, and it has nothing whatever to do with the collective agreements creating seniority. This was an interrailroad arrangement for interrailroad runs and allotting the work thereon in accordance with the decisions of the forums of the Brotherhoods. These particular respondents, as distinguished from the other C. & N. W. employees in the C. & N. W. Nebraska Division, and all other C. & N. W. employees, were dissatisfied because, although a few miles of track in the C. & N. W. Nebraska operating division (Blair to California Junction) were utilized for the interrailroad runs, the work was divided

between the Sioux City Division of C. & N. W. employees, whose trackage comprised more than one-half of the total trackage in the runs, and the C. St. P. M. & O. employees whose work was confined to the proper percentage based on the miles of C. St. P. M. & O. trackage used for the runs. Such a controversy involved no seniority question whatever and the collective agreements do not purport to give any rights which could be violated or denied regardless of how that controversy was determined.

The settlement of that controversy did not affect the relations between C. & N. W. Nebraska Division employees and the C. & N. W. Sioux City Division employees. The seven and one-half miles' stretch of track between Blair and California Junction was continued open to all C. & N. W. Nebraska Division employees in handling trains originating upon or destined to the Nebraska Division of the C. & N. W., and when in any other way so utilized in work to which the employees of said Division had any seniority rights. Respondents' petition does not allege that their seniority rights over said seven and one-half miles of trackage have been invaded or that any of the petitioners failed or neglected to give respondents recognition for any part of C. & N. W. runs on C. & N. W. tracks which did in fact constitute C. & N. W. divisional or interdivisional runs, or their proper percentage thereof based upon mileage (R. 4, 5).

To the contrary, respondents, after alleging certain conclusions as to seniority, which were disproved without any attempt by the respondents in rebuttal, sought to compel the C. & N. W. and its employees in the Sioux City Division to grant rights to a mileage percentage over the tracks of a separate railroad, the C. St. P. M. & O. Obviously, neither the C. & N. W. management nor

the C. & N. W. Sioux City Division employees were in a position to control or provide for satisfying any such demands.

Respondents, at pages 15-16 of their response to the petition for the writ, point out that in *Hansberry v. Lee*, 311 U. S. 32, 85 L. Ed. 11, this Court has refused to recognize the existence of a class or that those said to be in the class had interests which were identical, even where so stipulated by all parties to the action, if such was contrary to the fact. The respondents in the present case have alleged seniority rights on a stretch of track and over certain railroad runs, which the evidence shows is contrary to the fact. The Circuit Court of Appeals has based its conclusions on certain collective rights which are not asserted and which the evidence shows in fact not to be collective. That Court also found those rights not only to be collective but common to all in a certain class comprised of the respondents, while the evidence established that this was contrary to the fact, since many of the C. & N. W. Nebraska Division employees, as in the *Hansberry v. Lee* case, are free alternatively either to assert rights similar to those claimed by the respondents or to challenge them where their interests are adverse and conflicting, as is the fact in the present case. It is therefore clear that neither the disproved conclusions pleaded in respondents' petition, nor the unsupported conclusions of the Circuit Court of Appeals, both being affirmatively shown by the record to be contrary to the fact, can serve to aid any Federal Court in assuming jurisdiction of this case. To the contrary, the facts in the record affirmatively and conclusively show that the Federal Court does not have jurisdiction. See also *Milk Wagon Drivers Union of Chicago, etc., et al., v. Associated Milk Dealers, et al.*, 39 F. Supp. 671.

C

The Circuit Court of Appeals seemed to have no difficulty in finding that the aggregate claims of the respondents "for the life of the contracts will greatly exceed $3,000.00" (R. 64). The contracts to which the Court referred were the collective agreements (R. 65). The record before that Court did not disclose what was the "life of the contracts." However, the record does disclose (R. 39-41) that both the manner in which the work on the runs was allotted and the tracks over which the runs were operated have been changed more than once; and, further, that either railroad could at any time elect to handle the work entirely on its own lines, which would not only terminate the interrailroad runs entirely, but exclude all the employees of the other railroad from any part of that work. The allocation of the work as it is now made cannot be changed without creating a more serious and justified objection from either C. St. P. M. & O. employees or C. & N. W., Sioux City Division, employees, as the history of the controversy clearly establishes (R. 37-41, 45-8). Hence, the real "life" of there being any work to allocate in these interrailroad runs is limited to such time as it continues to be allocated as at present. Under such a situation its "life" cannot be such as would create any value whatever in the claims of these respondents which would require a different allocation, regardless of whether aggregated or not. See *System Federation No. 59, etc., v. Louisiana & A. Ry. Co.*, 119 F. (2d) 509, at page 515.

Further, the Circuit Court of Appeals fails to recognize the fact that railroad seniority in and of itself is of value only when had by a given man under given circumstances and in conjunction with the other fruits of collective bargaining, such as hours of work and rates of

pay. Respondents have failed to establish that there is any work which they want and which the employer is bound to provide to which any seniority is applicable. With the record in such a state there is no yardstick to use in establishing any value to respondents' claims.

But of course the basic error of the Circuit Court of Appeals was in trying to measure the value of respondents' claims by the life of contracts which had no connection whatever with those claims. The claims as asserted by the respondents not springing from or controlled by the collective agreements, there could be no collective rights asserted thereon which have any value, again, whether aggregated or not.

The burden of establishing jurisdiction rested on the respondents. *Kvos, Inc., v. Associated Press*, 299 U. S. 269, 81 L. Ed. 183; *McNutt v. General Motors Accept. Corp.*, 298 U. S. 178, 80 L. Ed. 1135; *Town of Lantana, Fla., v. Hopper*, 102 F. (2d) 118.

In *Kvos, Inc., v. Associated Press*, 299 U. S. 269, 81 L. Ed. 183, the Court said:

> "The petitioner's motion was an appropriate method of challenging the jurisdictional allegations of the complaint. It did not operate merely as a demurrer, for it did not assume the truth of the bill's averments. * * * On the contrary, the motion traversed the truth of the allegations as to amount in controversy and in support of the denial recited facts dehors the complaint. * * * They required the trial court to inquire as to its jurisdiction before considering the merits, * * *. Where the allegations as to the amount in controversy are challenged by the defendant in an appropriate manner, the plaintiff must support them by competent proof. * * * And in such inquiry complainant had the burden of proof." Citing *McNutt v. General Motors Accept. Corp.*, 298 U. S. 178, 80 L. Ed. 1135.

The Court in *Town of Lantana, Florida, v. Hopper*, 102 F. (2d) 118, in referring with approval to *McNutt v. General Motors Accept. Corp., supra*, on March 9, 1939, said:

> "Federal courts are of limited jurisdiction, fixed by statute, and the presumption is against jurisdiction throughout the case. * * * After an exhaustive review of the previous authorities, it was held that the burden of proving the necessary jurisdictional facts rested upon complainant throughout the case. As this burden had not been sustained, the case was dismissed."

In any event, the jurisdictional question was raised, and, as stated in *McNutt v. General Motors Accept. Corp., supra:*

> "It is the duty of the Court, when it shall appear to its satisfaction that the suit does not really and substantially involve the necessary amount to give it jurisdiction, to dismiss the same, and this the Court may do whether the parties raise the question or not. In the present case the issue was raised by answer, and, therefore, it became necessary for the Court to determine the question of jurisdiction upon the facts presented. * * *"

After the District Court refused to proceed further and required respondents to make their showing on the jurisdictional question, as was held proper in *Page v. Wright*, 116 F. (2d) 449, and approved by the Eighth Circuit in this case (R. 63), respondents confined their attempts to meet this burden by filing ten affidavits (R. 23-32), merely reiterating the same formal conclusions as alleged in Paragraph 13 of their petition (R. 5). Although the District Court offered to give respondents a further opportunity to present evidence (R. 52) after petitioners' evidence was all submitted, the respondents elected to rely on the record as being sufficient to estab-

lish that they had the right to aggregate their claims, and that such aggregation established more than $3,000.00 to be in controversy (R. 52).

CONCLUSION

In conclusion, petitioners submit:

1. That respondents in their petition in the District Court erroneously claimed that the trackage involved from Omaha to Blair was, in fact, C. & N. W. trackage, and as such a part of the Nebraska Division of the C. & N. W., over which they had seniority rights. This was challenged appropriately in the District Court. Proof was called for. Affidavits were submitted by petitioners showing that trackage to belong to the C. St. P. M. & O., a separate railroad. Respondents offered no counter-proof. This left the fact unchallenged.

2. Respondents in the District Court in their petition alleged that there was more than $3,000.00 involved as to each plaintiff. This was appropriately challenged. Proof was called for. Petitioners showed that no such amounts could be involved as to each plaintiff. Respondents furnished no counter-proof, and finally admitted the truth of petitioners' showing on that point.

3. The Circuit Court of Appeals misconceived the distinction between ordinary collective agreements establishing seniority rights, and the interrailroad agreement involved here for the division of work between employees of two different railroads where traffic had been diverted from one to the other for operating reasons. The Circuit Court of Appeals upon this erroneous premise concluded seniority rights were involved in the interrailroad agreement, and without any evidence to support it, assumed that the life of such agreement would be such that the value of the runs to the respondents, if their

seniority entitled them to any of the runs, must be more than $3,000.00. Hence, the Court of Appeals asserts this case to represent a true class action, notwithstanding the asserted position of the respondents was that it was only a spurious class action.

Petitioners therefore submit that the true measure of the controversy is found in *Clark v. Gray*, supra, and that the District Court was right in so considering the case. We therefore respectfully submit that the judgment of the Circuit Court of Appeals should be reversed and that of the District Court affirmed.

Respectfully submitted,

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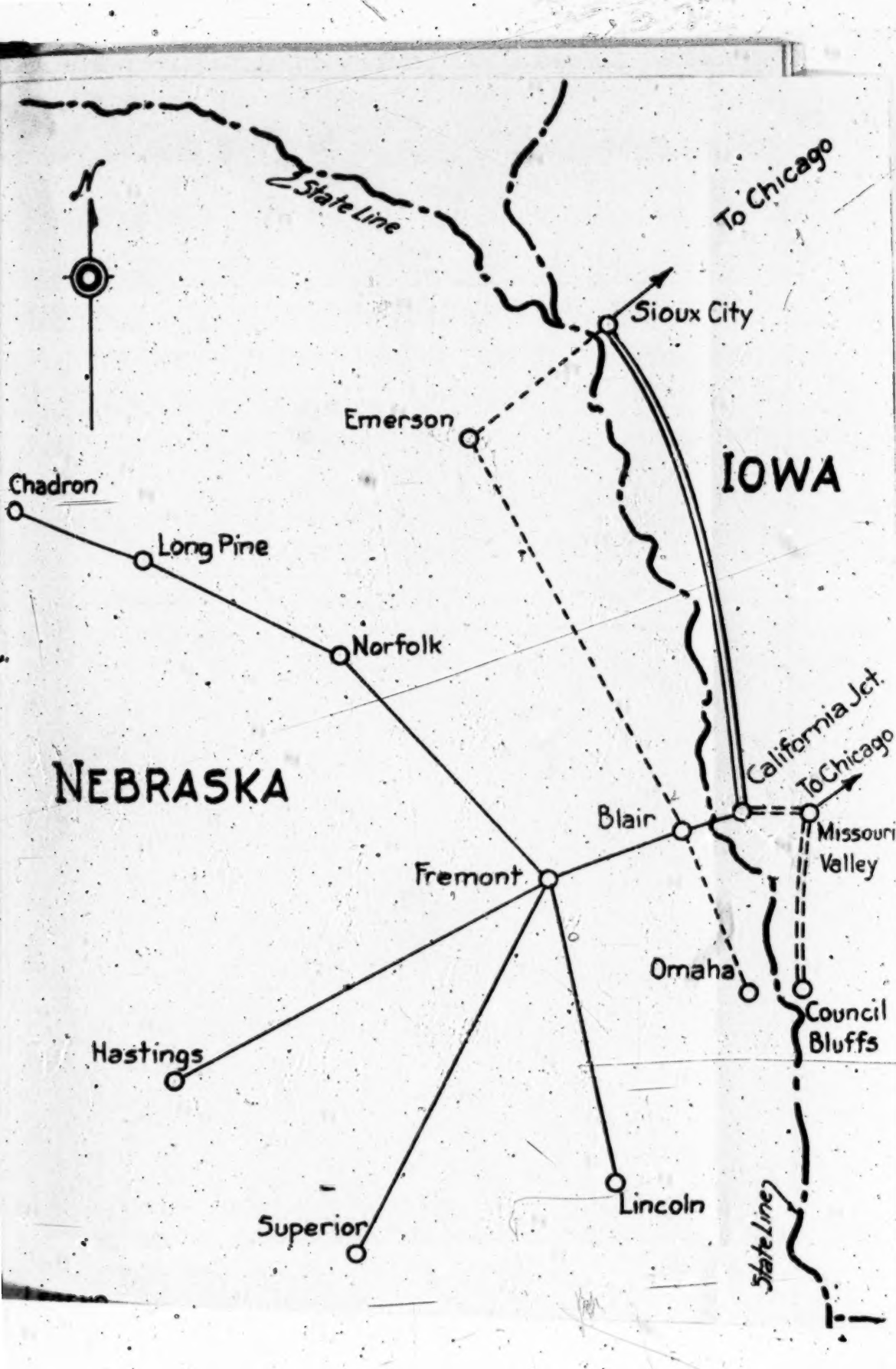
APPENDIX

Sections 20-205 and 20-206, Compiled Statutes of Nebraska, 1929:

20-205. "Written Contracts, Foreign Judgments. Within five years, an action upon a specialty, or any agreement, contract or promise in writing, or foreign judgment."

20-206. "Oral Contracts, Statutory Liabilities. Within four years, an action upon a contract, not in writing, expressed or implied; an action upon a liability created by statute, other than a forfeiture or penalty."


N
State Line
To Chicago
Sioux City
Emerson
IOWA
Chadron
Long Pine
Norfolk
NEBRASKA
California Jct.
To Chicago
Blair
Missouri Valley
Fremont
Omaha
Council Bluffs
Hastings
Lincoln
Superior
State Line